Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Petition of the People of the State of California and the Public Utilities Commission of the State of California to Retain Regulatory Authority Over Intrastate Cellular Service Rates	)	**PR Docket No. 94-105**

To: The Commission

PETITION FOR RECONSIDERATION

The Cellular Resellers Association, Inc. ("CRA"), acting pursuant to Section 1.106(a) of the Commission's rules, hereby petitions for reconsideration of the Commission's decision in the above-referenced matter. More specifically, CRA requests that the Commission allow the California Public Utilities Commission ("CPUC") to retain jurisdiction to dispose of complaints by cellular resellers as well as other members of the public concerning rates for intrastate service which are unreasonably discriminatory. In support of that request, the following is stated:

1. CRA is the state association of cellular resellers in California. CRA participated in the proceedings in the above-referenced docket prior to the issuance of the Report and Order on May 19, 1995.

2. In denying California's request to retain regulatory authority over cellular rates for intrastate service, the Commission placed substantial reliance on two factors: first,

California's failure to account for "the direct and fundamental changes to the duopoly cellular market structure that are being realized by [Personal Communications Services ("PCS")] and other services, such as wide area [specialized mobile radio ("SMR")]; and, second, California's failure to "present evidence showing widespread consumer dissatisfaction with [commercial mobile radio service ("CMRS")] providers in that state, or discuss what specific rate regulations are needed to address whatever level of dissatisfaction may exist." Report and Order, FCC 95-195 (May 19, 1995) at ¶ 97. Those conclusions cannot be squared with the undisputed facts in the record and, more importantly, would needlessly expose cellular resellers and other cellular subscribers to the risk of unreasonable discrimination by cellular carriers.

3. Contrary to the Commission's conclusion, California did take into account the advent of PCS, wide area SMR systems, and other new mobile technologies. California observed in its petition that those new mobile communications technologies are nonexistent or in nascent stages of development, that none of those new mobile communications technologies provides any competition to the cellular carriers, and that State regulation was therefore needed until March 1, 1996, which California estimated to be the earliest date by which those new mobile communications services would be sufficiently mature to offer meaningful competition to cellular carriers.

4. There is nothing in the record or in the Commission's Report and Order to dispute California's assessment concerning the status of PCS, wide area SMR systems, or other new mobile communications technologies. To be sure, as the Commission observed, "PCS activity is undeniably real" and may be "having an impact on the present [cellular] marketplace." Report and Order at ¶ 33. But PCS is not here now. The Commission is just now beginning to issue MTA licenses and has not yet commenced the auction for BTA licenses. Construction of a PCS system will require substantial investment of monies and time before it can become operational. CRA is unaware of any estimate, and the Report and Order cites none, which provides reliable evidence that the MTA PCS systems will be providing service to substantial portions of the population prior to March 1, 1996. Indeed, the Report and Order claims only that PCS can be expected to have a "significant impact on existing competitors" within two (2) years -- long after the passage of the March 1, 1996 deadline proposed by California. Report and Order at ¶ 32. See San Francisco Business Times (Feb. 17-22, 1995), p. 3 (Pacific Bell Mobile Services CEO estimates that his company will not have "a commercial trial" for PCS in San Francisco until the summer of 1996).

5. The Commission's undue reliance on the advent of PCS, wide area SMR systems, and other new mobile technologies has immediate significance for cellular resellers and other customers of California's cellular carriers. Notwithstanding the

Commission's hopes for a more competitive environment in the future, cellular resellers will remain the cellular carriers' only meaningful competition until at least March 1, 1996. In this context, the Commission's reliance on the absence of consumer dissatisfaction not only misstates the record but is myopic as well.

6. As CRA explained in its Reply Comments of October 19, 1994, Section 332(c)(3) of the Communications Act does not distinguish between States who propose to retain regulation from those States who propose to inaugurate regulation. The statutory provision merely says that States must demonstrate the need for regulation to protect consumers against unreasonable or discriminatory rates. See CRA Reply Comments (October 19, 1994) at 5-8.

7. Common sense dictates that the Commission account for whether a State is proposing to retain regulatory authority or to inaugurate regulatory authority. A State that is proposing to inaugurate regulatory authority for the first time should be able to provide evidence of anticompetitive behavior, consumer dissatisfaction, and other indicia of marketplace failure. A State proposing to retain regulatory authority will obviously be unable to provide the same level of evidence -- or indeed any evidence at all -- of such anticompetitive behavior, consumer dissatisfaction, and other indicia of marketplace failure.

8. In California, for example, the cellular market has always operated under a State regulatory environment. That

regulatory environment has required the cellular carriers to provide reasonable and nondiscriminatory rates for intrastate service. See CRA Reply Comments (October 19) at 8-21. Since the CPUC has been vigorous in enforcing those requirements, the absence of widespread anticompetitive behavior and consumer dissatisfaction is understandable. To demand more of California is, in effect, to require the CPUC to demonstrate that the cellular carriers have totally ignored California's State law and CPUC regulation.

9. Despite the CPUC's vigorous enforcement of its regulatory program, CRA did provide numerous examples of situations where California's cellular carriers unreasonably discriminated against cellular reseller subscribers in the provision of intrastate rates and services. CRA Reply Comments (October 19, 1994) at 12-17. CRA further pointed out that the CPUC was instrumental in resolving those complaints and ensuring that instances of unreasonable discrimination did not become more pervasive. The availability of the CPUC as a forum for complaints was often sufficient by itself to chill the prospect of any anticompetitive behavior by the cellular carriers.

10. The Report and Order does not even acknowledge the information supplied by CRA, let alone reconcile that information with the Commission's decision to strip the CPUC of any authority to dispose of complaints involving discriminatory conduct with respect to intrastate service. The Commission merely says that it will address that issue in a future proceeding involving CMRS.

Report and Order at ¶ 147. It is unclear when the Commission will resolve that issue or what protection the Commission will provide for resellers as well as other customers of cellular carriers in California (and in other States).

11. The Commission should not allow a critical void in regulatory authority to persist for any period of time. If the CPUC is not available to dispose of complaints concerning unreasonable discrimination, cellular carriers will be free to offer promotions and service plans which unreasonably discriminate against the cellular resellers' subscribers (and against other customers as well). The record shows that the cellular carriers were prepared to undertake that risk even while the CPUC had regulatory authority; the risk becomes that much larger if the CPUC is deprived of any jurisdiction to dispose of such complaints and this Commission leaves open the question of whether it will dispose of such complaints. The ensuing regulatory vacuum will allow the cellular carriers to establish whatever rate differentials they choose, regardless of how unreasonably discriminatory they may be. See Application of Los Angeles Cellular Telephone Co., Dkt. No. A.94-02-018 (carrier proposal to negotiate private contracts with subscribers).

12. This Commission has stated on repeated occasions that cellular resale is important as a competitive force. Those pronouncements are no less relevant today merely because PCS, wide area SMR, and other new mobile communications technologies may be available in the future. The Commission should stand

behind its pronouncements. The Commission should allow the CPUC to dispose of complaints concerning carrier rates which unreasonably discriminate against cellular reseller subscribers or other customers. Failing that, the Commission should clearly state that it will assume jurisdiction of such complaints and be prepared to dispose of them expeditiously.

WHEREFORE, in view of the foregoing, it is respectfully requested that the Commission reconsider its decision in the above-referenced matter and authorize the CPUC to retain jurisdiction over unreasonable discriminatory activities involving intrastate service or, in the alternative, assume jurisdiction over complaints involving such matters.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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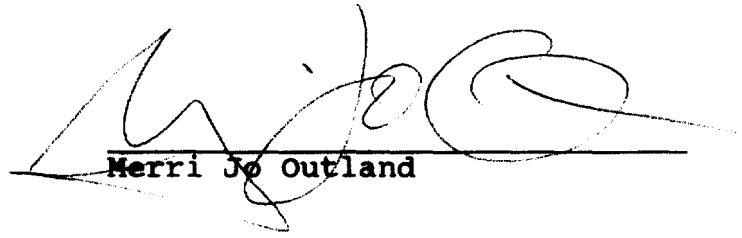

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